

**STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD**

DELAWARE CORRECTIONAL OFFICERS)	
ASSOCIATION,)	
Charging Party,)	
)	
v.)	ULP No. 01-07-325
)	
STATE OF DELAWARE, DEPARTMENT)	
OF CORRECTION,)	
Respondent.)	

PROBABLE CAUSE DETERMINATION

The State of Delaware, Department of Corrections ("State") is a public employer within the meaning of Section 1302(n) of the Public Employment Relations Act, 19 Del.C. Ch. 13 (1994 ("Act")). The Delaware Correctional Officers' Association ("DCOA") is an employee organization within the meaning of Section 1302(h) of the Act and the exclusive representative of certain employees of the DOC, as defined in Department of Labor Rep. Case N0. 1(h), within the meaning of Section 1302(j) of the Act.

The unfair labor practice charge, as amended and refiled on July 24, 2001, alleges conduct by the State in violation of 19 Del.C. Section 1307(a)(2) and (a)(3). Specifically, the charge alleges the State is filling vacancies with graduates from the training academy who remain in the positions until the completion of their probationary period and become members of the Association. DCOA contends this practice deprives bargaining unit members of the opportunity to obtain these positions through the procedure provided for in Articles 32 and 33, of the collective bargaining agreement.

In its Answer filed on August 2, 2001, the State denies the material allegations set forth in the charge. Under New Matter, the State requests that because the allegations allege violations of specific

provisions of the collective bargaining agreement the matter should be deferred to the contractual arbitration procedure which is the exclusive procedure for resolving such disputes.

In its Response filed on August 8, 2001, the Association denies the material allegations set forth under New Matter.

DCOA also contends that because the State's Answer was not verified by an employee of the Department of Correction, the Answer does not comply with PERB Rules. Consequently, the Answer is improperly filed so that the averments set forth in the Charge should be considered admitted and the charge sustained.

APPLICABLE STATUTORY PROVISIONS

19 Del.C. Section 1307, Unfair labor practices, provides, in relevant part:

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
 - (3) Encourage or discourage membership in an employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.

ISSUE

Whether the conduct alleged in the Charge constitutes probable cause to believe that an unfair labor practice may have occurred?

DISCUSSION

The Answer by the State was properly filed pursuant to PERB Regulation 5, Unfair Labor Practice Proceedings, Section 5.3, Answer to Charge.

Where an unfair labor practice charge centers upon the interpretation of contract language, the Delaware PERB has adopted a limited deferral policy wherein the meaning of the disputed language is deferred to the contractual arbitration procedure. FOP Lodge 1 v. City of Wilmington, Del.PERB, ULP No. 89-08-040, I PERB 449, 453 (1989).

Deferral is generally limited to situations where (1) there exists a long-standing and well established collective bargaining relationship; (2) the employer is willing to arbitrate; and (3) the resolution of the contractual dispute would resolve the underlying issue presented in the unfair labor practice charge. Red Clay Ed. Assn. v. Bd. of Ed., Del. PERB, ULP No. 98-08-052A, I PERB 607 (1991).

Where deferral is appropriate, PERB has retained jurisdiction “for the express purpose of reconsidering the matter, on application of either party, for any of the following reasons: (1) the arbitration decision fails to resolve the underlying statutory issue; (2) the arbitration decision is repugnant to the statute; (3) the arbitral process was unfair; and/or (4) the dispute is not being resolved by arbitration with reasonable promptness. FOP, Lodge 1, (supra.), I PERB at 455.

DETERMINATION

Consistent with the foregoing discussion, the matter is deferred to the parties’ contractual grievance and arbitration procedure.

Pending the issuance of the arbitration decision, there is no reason to believe that an unfair labor practice may have occurred.

The PERB will retain jurisdiction pursuant to the conditions set forth above.

August 20, 2001
(Date)

/s/Charles D. Long, Jr.
Charles D. Long, Jr.,
Executive Director